Agenda Date: 12/22/04

Agenda Item: 4D



STATE OF NEW JERSEY

Board of Public Utilities Two Gateway Center Newark, NJ 07102 www.bpu.state.nj.us

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(SERVICE LIST ATTACHED)

BY THE BOARD:

By letter dated December 19, 2003, Verizon New Jersey, Iric. ("VNJ") filed a petition with the Board of Public Utilities ("Board") seeking abatement of certain business office rules, which had been instituted as part of the Board's Order In the Matter of the Investigation of IntraLATA Toll Competition on a Presubscription Basis, Docket TX94090388 (June 3, 1997) (hereinafter "1997 Order"). These practices were intended to prevent VNJ as a local exchange carrier ("LEC") from using its predominant presence in the local exchange market to unduly influence customers' choices of intraLATA toll carriers.

The business office practices set forth in the 1997 Order from which VNJ sought relief are as follows:

- 1. LECs are precluded from "steering" customers to their own intraLATA service and prohibited from dissuading customers from selecting another carrier. (1997 Order at 17)
- 2. When customers call with questions regarding intraLATA presubscription, the LEC Customer Service Representative ("CSR") shall respond with a neutral statement describing intraLATA presubscription, and shall inform the customer that he or she may choose from a number of competing carriers. (Id. at 18).
- 3. When a customer calls with questions regarding intraLATA presubscription, LEC CSRs are not permitted to market the LEC's intraLATA toll services until after the customer is provided with the neutral information on intraLATA presubscription described in these guidelines and has been informed that he or she has a choice of carriers. (Id. at 18)
- 4. If an existing customer calls the business office to change intraLATA carriers, the LEC is prohibited from informing the customer that any optional toll calling plans which the customer may have with the LEC will be lost. (Id. at 14).

According to the petition, under the current Board ordered practices, VNJ directs its customer service representatives to market to potentially new (intraLATA toll service) subscribers using a "competitively neutral" statement, such as follows:

Calls outside your local calling area that are not long distance are known as regional toll calls. You have a choice in selecting your regional toll call provider. Do you know who you would like for a regional toll carrier?" (If the customer indicates uncertainty as to choice of carrier, the representative should offer to read a random list of intraLATA toll providers.)

In place of this statement now being made by its customer representatives to new subscribers, VNJ's petition requested that it be permitted to recommend VNJ regional toll service without the required "competitively neutral" statement first offering customers a choice of toll providers.

As discussed below, on March 31, 2004, in response to submissions by other parties regarding VNJ's petition, VNJ filed a Reply Brief in Support of VNJ's Petition for Abatement. In the reply, VNJ opined that the abatement of the rules without a corresponding change in the New Jersey Administrative Code would not be meaningful and sought permission to amend its prior petition with a proposal for a rulemaking proceeding.

Positions of the Parties

VNJ

VNJ, in presenting its request for abatement, argued that the New Jersey market for intraLATA toll had successfully evolved into a fully competitive market over the past six years and that the existing rules are now anti-competitive. Petition at 5. VNJ also claimed that the original rules were grounded in part on a concern that without these rules, there was a possibility of "slamming," or the unauthorized change of one's telecommunications carrier. In view of its perception that the competitiveness of the intraLATA market was no longer a concern and that concerns about slamming were no longer necessary because of the introduction of strong FCC and Board protections, VNJ submitted that it and other LECs were unfairly disadvantaged by the referenced business office practices. Petition at 6-7.

AT&T

On January 23, 2004, AT&T filed opposition to VNJ's petition. In its opposition, AT&T argued that although the market has changed since the business office rules were promulgated, VNJ is still the predominant carrier in the local exchange market, and in addition has obtained permission to compete in the long distance and international markets. Thus, in AT&T's view, the market changes referenced in VNJ's petition have "expanded the scope of VNJ's conflict-of-interest in relation to carriers that are dependent on access to VNJ's facilities to serve customers." AT&T Opposition at 2-3. Accordingly, AT&T urged that the Board deny VNJ's petition.

SPRINT/UNITED

Sprint Communications, L.P. on behalf of itself and the United Telephone Company of New Jersey, Inc. ("Sprint/UNJ") also filed opposition in this matter on January 23, 2004. Sprint/UNJ proposed that the VNJ petition is an attempt to "end-run" the rulemaking process, particularly since one of the rules is contained verbatim in N.J.A.C. 14:10-10.3. Sprint/UNJ also noted that while the other three rules are not specifically included in the New Jersey Administrative Code, the regulations prohibit discrimination or anti-competitive practices. Sprint/UNJ Opposition at 5. Sprint/UNJ also claimed that while VNJ's circumstances have changed, it now has "more of an ability to bundle products and services than any competitor," which should warrant more state regulatory scrutiny, not less. Sprint/UNJ at 7. Therefore, Sprint argued for denial of VNJ's request as filed.

Ratepayer Advocate

The Division of Ratepayer Advocate ("Advocate") submitted a letter in opposition to VNJ's Petition, dated May 21, 2004. The Advocate argued that the Board should reject VNJ's Petition because it seeks to eliminate appropriate safeguards which prevent VNJ from using its role as a Preferred Interexchange Carrier ("PIC")-change administrator to steer customers towards its own intraLATA services or from attempting to influence a customer's right to choose intraLATA carriers.

VNJ Reply

With respect to AT&T's position that VNJ is still the dominant carrier in the local exchange market, VNJ argued that there is a large number (170) of local carriers. VNJ agreed with Sprint/UNJ's comments that absent a rulemaking proceeding, affirmative changes to the four rules listed on page 4 of its petition would have little practical effect. Thus, VNJ requested elimination or suspension of the four guidelines set out in the 1997 Order and repeal or modification of N.J.A.C. 14:10-10.3(b) (2) and N.J.A.C. 14:10-10.5(b). It also sought permission to amend its prior filing in accordance with the latter request.

Board Discussion

In its 1997 Order, the Board found it necessary to establish the nondiscriminatory business office practices at issue herein to, among other things, prevent LECs from gaining an improper competitive advantage by attempting to steer customers to their intraLATA toll services. Further, uniform standards for the fair dissemination of information to customers were deemed necessary to ensure that consumers are able to make independent and informed choices concerning which carrier they prefer to provide intraLATA toll service.

The Board continues to believe that these principles are necessary and important. While the Board will retain the majority of the existing business office rules set forth in the 1997 Order in order to ensure nondiscriminatory practices, a review of the customer service representative statement used by Verizon Communications ("Verizon") affiliates in most of its other states reveals that this "script" is largely consistent with the rules pertaining to LEC contacts in New Jersey. Specifically, Verizon affiliates utilize the following language in 22 of the 31 jurisdictions in which Verizon operates:

You have a choice of Regional/Local toll and Long Distance providers. We are pleased to inform you that Verizon provides regional toll and Verizon Long Distance/Verizon Enterprise Solutions (Business) provides long distance. I can read a list of other providers if you're not sure which company you'd like.

The company will then read the list and provide marketing information on Verizon products only after the caller indicates a preference for Verizon. Permitting VNJ to utilize the "script" that its service representative's use in 22 other states would allow the company to provide uniform information that is consistent with the Board's requirements, as modified below.

While the Board will not eliminate the 1997 Order business office rules as they exist today, two modifications to the Order are appropriate. In the 1997 Order, the Board expressed its concern that the LEC may attempt to dissuade customers from choosing another carrier for toll service if it were permitted to inform the consumer that any VNJ optional toll calling plans would be lost if the customer were to switch intraLATA toll carriers. The instant petition seeks to have that restriction eliminated, arguing that the aforementioned warning is necessary information for the customer to make an informed choice. VNJ argues further that customers routinely complain that it does not alert them to the effect of switching carriers prior to making the change.

In light of the changed competitive landscape for toll services since the imposition of this restriction, the Board is satisfied that VNJ should be permitted to make a <u>factual</u> statement that the consequence of a customer's decision to switch toll providers will result in the loss of VNJ optional toll calling plans. The Board remains committed to the goal of giving consumers factual information so that they may make informed decisions. The Board Staff will monitor any complaints that arise in connection with the lifting of this restriction, and if VNJ uses this statement in any way to unduly dissuade consumers from switching intraLATA toll providers, the Board will take appropriate action to re-institute this restriction.

The Board also concludes that, given the increased levels of intraLATA competition in the state and the existing awareness and knowledge of customers with regard thereto, LECs need no longer be required to preface customer communications with statements describing intraLATA presubscription. Thus, statements which generically describe intraLATA service, such as "Calls outside your local calling area that are not long distance are known as regional toll calls," which are in current use in the state, may be eliminated from LEC language used in response to customer inquiries in New Jersey. This modification of the standard set out in the 1997 Order in no way relaxes or modifies the separate and distinct requirement that LECs inform customers that they may choose from a number of competing intraLATA carriers prior to referring to their own services. The Board is satisfied the proposal by VNJ satisfies this requirement.

As the primary rationale for imposing the current marketing restrictions, the Board referenced its intent to preclude "steering" to the LEC and, as importantly, to prevent the LEC from dissuading customers from choosing another carrier, as set out in the regulations. 1997 Order at 13. Therefore, the Board now reiterates that the existing business office practices contained in the Administrative Code and the 1997 Order remain unchanged, with the aforementioned exceptions regarding factual statements pertaining to possible loss of calling plans and statements describing intraLATA presubscription. The Board makes the aforementioned modifications pursuant to its legal authority to do so as set forth in N.J.S.A. 48:2-40.

Two regulations which arose from the 1997 Order also govern a LEC's ability to market its intraLATA toll services during customer contacts: (i) NJAC 14:10-10.3(b)(2), which precludes LECs from "steering" customers to their own intraLATA service and prohibits LECs from "dissuading customers from selecting another carrier"; and (ii) NJAC 14:10-10.5(b), which prohibits LECs from "engaging in any discriminatory or anticompetitive practices when processing PIC service orders." However, in order to ensure clarity in its regulatory framework in light of its rulings herein, the Board will direct Staff, as soon as practicable, but no later than the Board's next scheduled periodic review and/or readoption of NJAC 14:10, to initiate a rulemaking in order to review and modify said regulations in accordance with the Board's rulings today.

As already noted, the Board FINDS that the "script" used by Verizon in 22 other jurisdictions and providing information to its customers as outlined above with regard to the consequences of a decision to switch toll providers meet the Board's goals for nondiscriminatory customer contact, and do not constitute unlawful "dissuasion," "steering" or "anticompetitive practices" in violation of the NJAC regulations and Board guidelines.

DATED: 1/5/05

BOARD OF PUBLIC UTILITIES BY:

COMMISSIONER

PRESIDENT

FREDERICK

COMMISSIONER

JACK ALTER

COMMISSIONER

THEREBY OFF LIFY that the within document is a true copy of the original in the files of the Board of Public

Utilities

KRISTI IZZO

SECRETARY

SERVICE LIST

Docket No. TO03121013

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